IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 149 of 2005

NATIONAL INSURANCE CO LTD.
V/S
SMT. ANJANA DEVI & ORS

Mr. SANJEEV JOHARI, for the appellant

Date of Order : 4.2.2005

HON'BLE SHRI N P GUPTA, J.

REPORTABLE

ORDER

Heard learned counsel for the appellant.

The accident comprised of collision between the two vehicles, being truck no.773, and canter no.1032. In the accident, the driver of the canter expired. As appears from the impugned judgment, that the truck was not insured, and the appellant is the insurer of the canter.

The learned Tribunal by the impugned judgment has found, that the accident was outcome of the sole negligent driving of the truck driver, and as such, an award of Rs.2,29,000/- has been made, only against the owner, and driver of the truck, and claim petition has been dismissed against the owner, driver and insurer of the canter.

It is, on these facts, contended that since the appellant had satisfied the award made by the Tribunal under Section 140 of the Motor Vehicles Act,(hereafter to be referred to as 'the act' and since the claim petition as against the owner, driver, and the insurer of the canter (including the appellant) has been dismissed, the Tribunal should have directed reimbursement of the amount, paid by the appellant in satisfaction of the no fault award, and by not making any such order, the learned Tribunal has committed error. Learned counsel has relied upon the judgment of this Court, in Paroo & Ors. Vs. Likhama Ram & Ors., reported in 1998 (1) ACJ 628.

I have considered the submissions.

The relevant law in this regard is contained in the provisions of Section 140 and 141 of the act. The two provisions, for

ready reference, I feel like quoting them here, they read as under:

> "**140.** Liability to pay compensation in certain cases on the principle of no fault.-(1)Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
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> (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty] thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty-five] thousand rupees.
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> (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.
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> (4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wronglful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.
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> (5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :
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> Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163-A.
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> **141.** Provisions as to other right to claim compensation for death or permanent disablement.-(1) The right to claim compensation under Section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in Section 163-A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.
>
> (2) A claim for compensation under Section 140

> in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under Section 140 shall be disposed of as aforesaid in the first place.
>
> (3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under Section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and-
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> (a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;
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> (b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation."

A reading of the aforesaid provisions shows, that according to the sub-section (1) of Section 140, the owners of the vehicles, use, whereof, gave rise to the accident are jointly, and severally liable to pay the compensation in respect of the death or disablement, in accordance with the provisions of that Section. Then, under sub-section (2), the amount required to be paid to the claimants is specified. Then according to the sub-section (3), and sub-section (4), for laying such claim under Sub-Section (1), the claimant is neither required to plead, or prove, that the death or disablement arose on account of any wrongful act, or neglect, or default of the owner, or owners of the vehicle, or vehicles concerned, or any other person, nor any such claim can be defeated by reason of any wrongful act, neglect, or default of the victim himself, nor the quantum can be reduced on the basis of the share of the responsibility of the victim. Thus, per-force the provisions of Section 140, to the extent of the amounts specified in sub-section (2), the liability for payment of the compensation, is joint and several, in cases, where more than one vehicle is involved in the accident. Admittedly, the appellant has satisfied the award so made by the Tribunal as against the owner, and driver of the canter, of which, the appellant is the insurer.

The precise question then is, as to whether the appellant is entitled to reimbursement, if after trial, the Tribunal happens to dismiss the claim against the owner, and driver of the vehicle, which was insured by the appellant**?** In my view, the answer is to be in the negative, inasmuch as, the claim under Section 166 is independent of the claim under Section 140, except to the extent provided in Section 141(3), according to which, if on the principle of fault, the person is found liable to pay the compensation, more than the amounts specified in Section 140(2), then liability is to be to the extent under Section 166, but if the liability is found to be equal, or less than the compensation specified in Section 140(2), then the liability is to the extent specified in Section 140 (2).

On proper reading of Section 141 (3), in my view, if the claim petition happens to be dismissed against the owner, and driver of the canter, i.e. one of the vehicles involved in the accident, within the meaning of Section 141(3), it comes to a situation, that the owner, and driver of the canter are not liable to any compensation on the principle of fault, which obviously, means less than the compensation payable under Section 140(1). It is not provided in Section 141(3), that where owner, and driver of one of the vehicles, who is jointly and severally liable under Section 140(1), is not found liable on the principle of fault, he will not be liable for any compensation under Section 140(1) either. In that view of the matter, since the liability under Section 140(1) is not dependent on, the tribunal ultimately finding the owner, and driver of the vehicle liable on the principle of fault, except to the extent, that where such liability is found to an extent exceeding the liability provided under Section 140(2), then the person is liable to pay the amount, which he is found liable to pay on principle of fault, i.e. is entitled to adjust the amount paid in discharge of liability under Section 140(1). Therefor simply because the owner driver and Insurer of the Canter are not held liable on the principle of fault under section 166, the insurer cannot claim reimbursement of the amount paid in satisfaction of the award made under section 140.

So far as the judgment of this court in Paroo's case is concerned, that has no bearing on the controversy involved in the present case, inasmuch as, there, the question was about entitlement of the insurer to be reimbursed from the owner, and driver of the vehicle, which was insured, as the insurer had satisfied the claim under Section 140(1), and ultimately, the Tribunal had found, that the insurer was not liable. Those circumstances have no relevance in the present case, inasmuch as, that was a matter of dispute inter-se between insurer and

the insured, while in the present case, the controversy is, as to whether the insurer, or for that matter, even the owner, and driver of the vehicle, who is ultimately not found to be liable on the principle of fault, is entitled to claim the reimbursement of the amount paid in satisfaction of the award passed under Section 140.

The net out come of the aforesaid discussion is that, in my view, the appellant is not entitled to claim any reimbursement.

The appeal thus has no force and is dismissed summarily.

(N P GUPTA), J.

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